

In the Matter of Merchant Mariner's Documents No. Z-307512D1 and  
all other Licenses, Certificates and Documents  
Issued to: JOHN CHATMAN

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

849

JOHN CHATMAN

This appeal has been taken in accordance with Title 46 United States code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 12 April 1955, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended Merchant Mariner's Document No. Z-307512-D1 issued to John Chatman upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an oiler on board the American SS EXCHEQUER under authority of the document above described, on or about 9 May 1954, while said vessel was in the port of Djibouti, French Somaliland, he assaulted and battered a member of the crew, James M. Copeland, with a piece of a broken wooden crutch.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him. Three specifications alleging lesser included offenses were dismissed by the Examiner after he had found the above specification proved.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of James M. Copeland and another eyewitness to the incident.

In defense, Appellant offered in evidence his sworn testimony. He denied having struck Copeland with any part of the crutch. Appellant stated that he let go of the crutch when it broke after Copeland grabbed the crutch.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had

been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-307512-D1, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months from 29 March 1955.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

On 9 May 1954, Appellant was serving as an oiler on board the American SS EXCHEQUER and acting under authority of his Merchant Mariner's Document No. Z-307512-D1 while the ship was in the port of Djibouti, French Somaliland.

On this date, Appellant was using a crutch as the result of an injury to one of his feet. Appellant and Copeland, a utilityman, became engaged in a loud and heated argument after Copeland had indelicately touched Appellant while he was bending over. The two seamen touched or shoved each other slightly as they continued arguing in the confined spaces of a narrow passageway. When Appellant raised his crutch to swing it at Copeland, the latter grabbed the crutch and it broke into several pieces. Appellant held on to a piece of the crutch about two feet long. He swung it at Copeland and hit him four times on the head, shoulders and arms before another member of the crew stopped Appellant, Copeland did not attempt to strike back. His only injury was a small bump on the head.

During his eleven years of service, Appellant's prior disciplinary record consists of an admonition in 1944 for inattention to duty; a three months suspension in 1945 for failure to relieve the watch, failure to obey an order and inattention to duty; a one month suspension plus five months on twelve months probation in 1953 for assault and battery of a crew member.

The latter order was worded so that the five months suspension should not become effective provided no charge was proved against Appellant within twelve months of 6 November 1953. The Examiner conducting the present hearing stated that he had no alternative with respect to making this five months suspension effective since the offense of 9 May 1954 was committed within twelve months of 6 November 1953. Hence, the present six months suspension includes the prior probationary suspension.

#### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant should have received only an

admonition for this offense since the Examiner found that there was provocation for the assault and that it was a relatively minor offense. It is also contended that the prior probationary suspension should not have been made effective because the twelve month probationary period had expired before Appellant was found guilty, in April 1955, of the offense committed on 9 May 1954.

COUNSEL ON APPEAL: Mr. William L. Standard of New York City by  
Louis R. Harolds, Esquire, of Counsel.

#### OPINION

Appellant's latter point is well taken. Since the order including the five month probationary suspension was improperly worded so that the effectiveness of the five months suspension was contingent upon proof of charges within twelve months of November 1953 rather than upon proof of acts committed within twelve months, the Examiner's order will be modified to delete five of the six months suspension under consideration.

It is my opinion that the conduct of Appellant, in striking Copeland with the piece of crutch, justifies the remaining one month suspension. Despite the absence of serious injury to Copeland and the provocation involved, the facts indicate that Appellant definitely was the aggressor and that Copeland did nothing which gave Appellant the right to attack Copeland with a piece of the crutch.

#### ORDER

The order of the Examiner dated at Boston, Massachusetts on 12 April 1955 is MODIFIED to provide for a suspension of one (1) month.

As so MODIFIED, said order is

AFFIRMED.

J. A. Hirshfreed  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 27th day of December, 1955